

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUN 28 2017

SEAN F. McAVOY, CLERK  
DEPUTY  
YAKIMA, WASHINGTON

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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOSE ALBERTO ABUNDIZ,

15 Defendant.

NO. 1:16-CR-2066-RMP

Plea Agreement

Fed. R. Crim. P. 11(c)(1)(C)

16 Plaintiff United States of America, by and through Joseph H. Harrington, Acting  
17 United States Attorney, and Ian L. Garriques, Assistant United States Attorney, for the  
18 Eastern District of Washington, and Defendant, JOSE ALBERTO ABUNDIZ, and the  
19 Defendant's counsel, Gregory L. Scott, agree to the following Plea Agreement pursuant  
20 to Fed. R. Crim. P. 11(c)(1)(C):

21 1. Guilty Plea and Maximum Statutory Penalties:

22 The Defendant agrees to plead guilty to the Indictment, charging the Defendant  
23 with Distribution of a Controlled Substance (50 grams or more of actual  
24 methamphetamine) in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii).

25 The Defendant understands that the statutory penalties for Distribution of a  
26 Controlled Substance, as charged in the Indictment, include a mandatory term of not less  
27 than ten (10) years imprisonment and not more than life; a fine not to exceed  
28 \$10,000,000; not less than five (5) years of supervised release; a \$100 special assessment;

1 and loss of certain federal benefits.

2 The Defendant understands that a violation of a condition of supervised release  
3 carries an additional penalty of re-imprisonment for all or part of the term of supervised  
4 release without credit for time previously served on post-release supervision.

5 2. The Court is Not a Party to the Agreement (Fed.R.Crim.P. 11(c)(1)(C) Plea):

6 The Court is not a party to this Plea Agreement and may accept or reject this Plea  
7 Agreement. Sentencing is a matter that is solely within the discretion of the Court. The  
8 Defendant understands that the Court is under no obligation to accept any  
9 recommendations made by the United States and/or by the Defendant; that the Court will  
10 obtain an independent report and sentencing recommendation from the U.S. Probation  
11 Office; and that the Court may, in its discretion, impose any sentence it deems  
12 appropriate up to the statutory maximums stated in this Plea Agreement.

13 The Defendant acknowledges that no promises of any type have been made to the  
14 Defendant with respect to the sentence the Court will impose in this matter. The  
15 Defendant understands that the Court is required to consider the applicable sentencing  
16 guideline range, but may depart upward or downward under the appropriate  
17 circumstances.

18 Despite the foregoing, the Defendant understands and agrees that this is a Plea  
19 Agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C). The Defendant may therefore  
20 withdraw from this Plea Agreement if the Court imposes a term of imprisonment in  
21 excess of one hundred and fifty (150) months. The Defendant also understands that the  
22 United States may withdraw from this Plea Agreement if the Court imposes a term of  
23 imprisonment of less than one hundred and fifty (150) months.

24 3. Denial of Federal Benefits:

25 The Defendant understands that by entering this plea of guilty the Defendant is no  
26 longer eligible for assistance under any state program funded under part A of title IV of  
27 the Social Security Act (concerning Temporary Assistance for Needy Families) or  
28 benefits under the food stamp program or any state program carried out under the Food  
Plea Agreement

Stamp Act. 21 U.S.C. § 862a. Further, the Court may deny the Defendant's eligibility to any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States. 21 U.S.C. § 862.

4. Waiver of Constitutional Rights:

The Defendant understands that by entering this plea of guilty the Defendant is knowingly and voluntarily waiving certain constitutional rights, including:

- a. The right to a jury trial;
- b. The right to see, hear and question the witnesses;
- c. The right to remain silent at trial;
- d. The right to testify at trial; and
- e. The right to compel witnesses to testify.

While the Defendant is waiving certain constitutional rights, the Defendant understands the Defendant retains the right to be assisted through the sentencing and any direct appeal of the conviction and sentence by an attorney, who will be appointed at no cost if the Defendant cannot afford to hire an attorney.

5. Elements of the Offense:

The United States and the Defendant agree that in order to convict the Defendant of Distribution of a Controlled Substance (50 grams or more of actual methamphetamine) in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii), as charged in the Indictment, the United States must prove beyond a reasonable doubt the following elements:

First, the defendant knowingly distributed a controlled substance;

Second, the defendant knew that it was actual methamphetamine or some other controlled substance; and

Third, the quantity of actual methamphetamine involved was at least 50 grams or more. (9th Cir. Crim. Jury Instr. 9.18 (2010) (modified)).

6. Factual Basis and Statement of Facts:

The United States and the Defendant stipulate and agree that the following facts

1 are accurate; that the United States could prove these facts beyond a reasonable doubt at  
2 trial; and these facts constitute an adequate factual basis for the Defendant's guilty plea:

3 During August, 2016, a person, who would later become a confidential human  
4 source (CHS), was arrested for possessing five ounces of methamphetamine. The CHS  
5 stated he/she had traveled to a residence on Bartlett Place in Yakima, WA, to obtain the  
6 five ounces of methamphetamine from an individual known as "Scarface." The CHS  
7 later identified Scarface as the Defendant Jose Alberto Abundiz.

8 On August 30, 2016, the CHS purchased approximately half a pound of  
9 methamphetamine from Defendant Abundiz at a residence on 48th Avenue in Yakima,  
10 WA. The narcotics purchase was audio/video recorded and took place in the attached  
11 garage of the residence. During the purchase approximately three and a half pounds of  
12 suspected methamphetamine were observed in a Tupperware container located on a table  
13 in the attached garage. The Defendant had removed the half pound of methamphetamine  
14 that was sold to the CHS from the Tupperware container and weighed it on a digital  
15 scale. During the purchase the CHS saw a black Glock handgun on a chair the Defendant  
16 was sitting in after he stood up. The CHS also saw a vehicle believed to be a Lincoln  
17 parked in the attached garage. The Lincoln was a vehicle the CHS previously saw in the  
18 attached garage with 30 to 50 firearms in the trunk. After the purchase of  
19 methamphetamine, the CHS left the residence and the Defendant was seen driving away  
20 from the residence in his red Acura.

21 On September 7, 2016, search warrants were executed for the 48th Avenue and  
22 Bartlett Place residences, a storage unit, and vehicles associated with Defendant.  
23 Abundiz was arrested near his red Acura with approximately \$4,000 cash and two rounds  
24 of ammunition on his person. In a post-*Miranda* statement, Abundiz stated that he was  
25 selling approximately one pound of methamphetamine per week. He stated that he had  
26 three firearms and approximately two pounds of methamphetamine in the Acura. He also  
27 stated he had several other firearms in a Lexus vehicle at the Bartlett Place residence and  
28 then consented to a search of the Lexus vehicle where nine additional firearms (7

1 shotguns and 2 rifles) and ammunition were recovered. In the red Acura, officers  
2 located a .40 caliber handgun under the driver's seat, two rifles, and approximately 1.5  
3 pounds of suspected methamphetamine.

4 Later DEA Laboratory reports confirmed that the total quantity of controlled  
5 substances involved in Defendant's instant offense was at least 987.9 grams of actual  
6 methamphetamine. Defendant has approximately seven prior felony convictions, of  
7 which at least three involved narcotics offenses.

8 This statement of facts does not preclude either party from presenting and arguing,  
9 for sentencing purposes, additional facts which are relevant to the guideline computation  
10 or sentencing, unless otherwise prohibited in this agreement.

11 7. The United States Agrees:

12 a. Not to File Additional Charges:

13 The United States Attorney's Office for the Eastern District of Washington agrees  
14 not to bring any additional charges against the Defendant based upon information in its  
15 possession at the time of this Plea Agreement and arising out of Defendant's conduct  
16 involving illegal activity charged in the Indictment, unless the Defendant breaches this  
17 Plea Agreement any time before or after sentencing.

18 b. Sentencing Enhancements Pursuant to 21 U.S.C. § 851:

19 On March 1, 2017, the United States filed a notice and information pursuant to 21  
20 U.S.C. § 851 alleging that Defendant has three prior felony drug offense convictions  
21 which would, without a plea agreement, increase his applicable penalties for the charge in  
22 the Indictment to a mandatory term of life imprisonment without release, a fine of up to  
23 \$20,000,000, and not less than ten years of supervised release if ever released. *See* ECF  
24 No. 46. If Defendant pleads guilty pursuant to this Plea Agreement as set forth herein,  
25 the United States will, at the time of sentencing, move to dismiss the preceding Section  
26 851 notice and information alleging Defendants' prior felony drug offense convictions.  
27 Defendant would thus be subject to penalties of not less than ten (10) years of  
28 incarceration but not more than life, a fine not to exceed \$10,000,000, and not less than  
Plea Agreement



1 five years of supervised release pursuant to 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii).

2 8. United States Sentencing Guideline Calculations:

3 The Defendant understands and acknowledges that the United States Sentencing  
4 Guidelines (hereinafter "U.S.S.G.") are advisory to this case and that the Court will  
5 determine the Defendant's applicable sentencing guideline range at the time of  
6 sentencing.

7 a. Base Offense Level:

8 The United States and the Defendant agree that the instant offense involved at least  
9 987.9 grams of actual methamphetamine. The United States and the Defendant therefore  
10 agree that pursuant to U.S.S.G. § 2D1.1(c)(3), the base offense level is thirty-four (34) for  
11 at least 500 grams but less than 1.5 kilograms of actual methamphetamine.

12 b. Specific Offense Characteristics

13 The United States and the Defendant also agree and stipulate that the base offense  
14 level is increased by two (2) levels for possessing a firearm pursuant to U.S.S.G. §  
15 2D1.1(b)(1).

16 c. Acceptance of Responsibility:

17 If the Defendant pleads guilty and demonstrates a recognition and an affirmative  
18 acceptance of personal responsibility for the criminal conduct; provides complete and  
19 accurate information during the sentencing process; and does not commit any obstructive  
20 conduct, the United States will recommend that the Defendant receive a two (2) level  
21 reduction for acceptance of responsibility, and if the Defendant's adjusted offense level is  
22 sixteen (16), or greater, the United States will move for a one (1)-level reduction for  
23 timeliness. See U.S.S.G. §§ 3E1.1(a) and (b).

24 The Defendant and the United States agree that the United States may at its option  
25 and upon written notice to the Defendant, not recommend a three (3) level downward  
26 reduction for acceptance of responsibility if, prior to the imposition of sentence, the  
27 Defendant is charged or convicted of any criminal offense whatsoever or if the Defendant

28 ///

1 tests positive for any controlled substance.

2 d. Criminal History:

3 The United States and the Defendant understand that the Defendant's criminal  
4 history computation ultimately will be determined by the Court after review of the  
5 Presentence Investigation Report. The United States and the Defendant have made no  
6 agreement and make no representations as to the criminal history category, which shall be  
7 determined after the Presentence Investigation Report is completed.

8 e. Departures and/or Variances:

9 The United States and the Defendant stipulate and agree to recommend that the  
10 Court impose a sentence of one hundred and fifty (150) months of incarceration.

11 9. Incarceration:

12 The United States and the Defendant stipulate and agree to recommend that the  
13 Court impose a sentence of one hundred and fifty (150) months of incarceration.

14 10. Criminal Fine:

15 The United States and the Defendant are free to make whatever recommendation  
16 concerning the imposition of a criminal fine that they believe is appropriate.

17 11. Supervised Release:

18 The United States and the Defendant agree to recommend that the Court impose a  
19 five (5) year term of supervised release and to recommend that the Court impose the  
20 statutorily mandated, standard, and suggested special conditions of supervised release set  
21 forth in the Presentence Investigation Report.

22 12. Mandatory Special Penalty Assessment:

23 The Defendant agrees to pay the \$100 mandatory special penalty assessment to the  
24 Clerk of Court for the Eastern District of Washington, at or before sentencing, pursuant to  
25 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United States before  
26 sentencing as proof of this payment.

27 13. Payments While Incarcerated:

28 If the Defendant lacks the financial resources to pay the monetary obligations

1 imposed by the Court, the Defendant agrees to earn the money to pay toward these  
 2 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility  
 3 Program.

4 14. Forfeiture:

5 The Defendant, JOSE ALBERTO ABUNDIZ, agrees to voluntarily relinquish and  
 6 forfeit any and all right, title, and interest to the United States of America that he has in  
 7 assets seized from him pursuant to his arrest on September 7, 2016, assets seized pursuant  
 8 to a consent search of his Lexus vehicle on September 7, 2016, and assets seized during  
 9 the execution of a search warrant on his Acura vehicle on September 7, 2016.

10 The Defendant agrees that the assets are subject to civil forfeiture to the United  
 11 States pursuant to 18 U.S.C. § 924(d)(1) and/or 21 U.S.C. § 881. The Defendant further  
 12 agrees not to contest the civil forfeiture of the assets to the United States. The assets to be  
 13 sought for civil forfeiture include, but are not limited to:

14 U.S. CURRENCY

15 1) \$4,145.75 U.S. currency seized on or about September 7, 2016, from  
 16 ABUNDIZ's person pursuant to his arrest; and

17 FIREARMS/AMMUNITION

18 Seized on or about September 7, 2016, from ABUNDIZ's person or ABUNDIZ's  
 19 Acura vehicle, bearing Washington License Plate: 255YUX, pursuant to his arrest  
 20 and/or the execution of a federal search warrant on the Acura.

- 21 2) Glock handgun, Model 22, Serial No.: GET082;
- 22 3) AR-15 style rifle, .223 caliber, DPMS Panther Arms Serial No.: FH137319;
- 23 4) AK-47 style rifle, Century Arms Inc., VZ 2008 Sporter, Serial No.:  
VZ08PM-011859;
- 24 5) Three (3) Glock magazines;
- 25 6) One (1) magazine holder;
- 26 7) Thirty-nine (39) .40 caliber bullets;
- 27 8) Forty-nine (49) 12-gauge shotgun shells;
- 28 9) Eighty-seven (87) .38 special bullets;
- 10) Fifty (50) .22 caliber bullets;



- 11) Twenty-six (26) 9mm rounds;
- 12) Twenty-nine (29) .40 caliber rounds;
- 13) One (1) shotgun shell;
- 14) Ninety-six (96) 7.62 sks rounds;
- 15) Two (2) .22 caliber rounds;
- 16) Twenty-eight (28) .223 rounds;
- 17) Thirteen (13) Colt .45 rounds;
- 18) One (1) muzzle loader ball;
- 19) Twenty (20) 7.62 x 51 rounds;
- 20) Two (2) S&W magazines;
- 21) One (1) 7.62 x 51 magazine;
- 22) One (1) Ruger magazine;
- 23) Three (3) 7.62 magazines;
- 24) One (1) .223 magazine; and

#### MISCELLANEOUS

- 25) Digital Scale, US Balance;
- 26) Voodoo Tactical gun bag; and

#### FIREARMS/AMMUNITION

Seized on or about September 7, 2016, from ABUNDIZ's Lexus vehicle, bearing Washington License Plate AWF7088, pursuant to a consent search.

- 27) Braztech 12-gauge shotgun, Serial No.: S12SP014889;
- 28) Rock Island Armory 12-gauge shotgun, Model PAHUMP, Serial No.: RIA1648596;
- 29) Mossberg 12-gauge shotgun barrel;
- 30) Remington 12-gauge shotgun, Model 11-48, Serial No.: 5039090; GLS
- 31) PW Arms rifle, caliber 7.62, Serial No.: ~~5039090~~; RCO16360; @JB JAK
- 32) Norinco 7.62 rifle, Serial No.: 1508582;
- 33) Benelli 12-gauge shotgun, Model NOVA, Serial No.: 2702001M;
- 34) JL Galeh and Sons 20-gauge shotgun, No Serial Number; 196769; @JB JAK
- 35) Winchester 12-gauge shotgun, Model SXP Pump, Serial No.: 12AZX40631; GLS
- 36) Remington Wingmaster 12-gauge shotgun, Serial Number REMOVED;
- 37) Green ammo box with mixed ammunition and a magazine;
- 38) A Rifle carrying case containing ammunition; and
- 39) A Black bag containing miscellaneous rounds of ammunition.

The Defendant acknowledges that the currency and the digital scale are subject to

1 forfeiture as property facilitating illegal conduct or represent property that constitutes or  
 2 is derived from any proceeds obtained directly or indirectly from controlled substance  
 3 offenses, in violation of 21 U.S.C. § 841, and are therefore civilly forfeitable to the  
 4 United States pursuant to 21 U.S.C. § 881.

5 The Defendant acknowledges that the firearms, ammunition and rifle case  
 6 containing ammunition are subject to forfeiture as property facilitating or involved in  
 7 illegal conduct in violation of 18 U.S.C. § 922(g)(1), felon in possession of firearms and  
 8 ammunition, and are therefore civilly forfeitable to the United States pursuant to 18  
 9 U.S.C. § 924(d)(1).

10 ~~S.A. The Defendant stipulates and warrants that he is the sole owner of the assets~~  
 11 ~~identified herein and that no one else has an interest in the assets.~~

12 The Defendant agrees to take all steps as requested by the United States to pass  
 13 clear title to the assets to the United States, to include the execution of pleadings and to  
 14 testify truthfully in any forfeiture proceeding, if necessary.

15 The Defendant agrees to hold all law enforcement and the United States, its agents,  
 16 and its employees harmless from any claims whatsoever arising in connection with the  
 17 seizure and forfeiture of any asset(s) covered by this agreement.

18 The Defendant further agrees to waive all constitutional, equitable and statutory  
 19 challenges in any manner (including direct appeal, habeas corpus, or any other means) to  
 20 any forfeiture carried out in accordance with this Plea Agreement on any grounds,  
 21 including that the forfeiture constitutes an excessive fine or punishment.

22 The Defendant waives any notice of forfeiture proceeding time frames and  
 23 consents to the federal forfeiture of the assets listed herein without further notice of  
 24 forfeiture proceedings. Defendant consents to the destruction and/or return of assets to

25 ///

26 ///

27 ///

28 ///

1 lawful owners, without further notice. Failure to comply with these obligations  
2 constitutes a breach of the Plea Agreement.

3 15. Additional Violations of Law Can Void Plea Agreement:

4 The Defendant and the United States agree that the United States may at its option  
5 and upon written notice to the Defendant, withdraw from this Plea Agreement or modify  
6 its recommendation for sentence if, prior to the imposition of sentence, the Defendant is  
7 charged or convicted of any criminal offense whatsoever or if the Defendant tests  
8 positive for any controlled substance.

9 16. Hyde Amendment Waiver:

10 The Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A  
11 (Statutory Note), for attorney's fees and other litigation expenses arising out of the  
12 investigation or prosecution of this matter.

13 17. Effect on Immigration Status:

14 The Defendant, recognizes that pleading guilty may have consequences with  
15 respect to his immigration status if he is not a citizen of the United States. Under federal  
16 law, a broad range of crimes are removable offenses, including the offense to which the  
17 Defendant is pleading guilty. Removal and other immigration consequences are the  
18 subject of a separate proceeding, however, and Defendant understands that no one,  
19 including his attorney or the District Court, can predict to a certainty the effect of his  
20 conviction on his immigration status if he is not a United States citizen. Defendant  
21 nevertheless affirms that he wants to plead guilty regardless of any immigration  
22 consequences that his plea may entail, even if the consequence is his automatic removal  
23 from the United States.

24 18. Appeal Rights:

25 The Defendant expressly waives his right to appeal his conviction, sentence, and  
26 supervised release imposed by the Court. Furthermore, the Defendant expressly waives  
27 his right to file any post-conviction motion attacking his conviction and sentence,  
28

1 including a motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective  
2 assistance of counsel based on information not now known by Defendant and which, in  
3 the exercise of due diligence, could not be known by Defendant by the time the Court  
4 imposes the sentence.

5 The Defendant acknowledges that this waiver shall result in the dismissal of any  
6 appeal or collateral attack the defendant might file challenging the conviction or sentence  
7 in this case, except for ineffective assistance of counsel as noted above. If the Defendant  
8 files a notice of appeal, a habeas petition, or other collateral attack, notwithstanding this  
9 agreement, the Defendant agrees that this case shall, upon motion of the government, be  
10 remanded to the district court to determine whether Defendant is in breach of this  
11 agreement and, if so, to permit the government to withdraw from the Plea Agreement.

12 19. Waiver of Inadmissibility of Statements:

13 The Defendant agrees to waive the inadmissibility of statements made in the  
14 course of plea discussions with the United States, pursuant to Fed. R. Crim. P. 11(f).  
15 This waiver shall apply if the Defendant withdraws this guilty plea or breaches this Plea  
16 Agreement. The Defendant acknowledges that any statements made by the Defendant to  
17 law enforcement agents in the course of plea discussions in this case would be admissible  
18 against the Defendant in the United States' case-in-chief if the Defendant were to  
19 withdraw or breach this Plea Agreement.

20 20. Integration Clause:

21 The United States and the Defendant acknowledge that this document constitutes  
22 the entire Plea Agreement between the United States and the Defendant, and no other  
23 promises, agreements, or conditions exist between the United States and the Defendant  
24 concerning the resolution of the case. This Plea Agreement is binding only upon the  
25 United States Attorney's Office for the Eastern District of Washington, and cannot bind  
26 other federal, state or local authorities. The United States and the Defendant agree that

27 ///

28 ///



1 this agreement cannot be modified except in a writing that is signed by the United States  
2 and the Defendant.

### 3 Approvals and Signatures

4 Agreed and submitted on behalf of the United States Attorney's Office for the  
5 Eastern District of Washington.

6 JOSEPH H. HARRINGTON  
7 Acting United States Attorney

8   
9 IAN L. GARRIQUES  
Assistant United States Attorney

Date

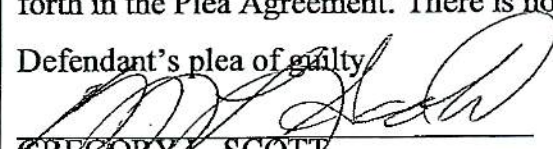
6/12/2017

10 I have read this Plea Agreement and have carefully reviewed and discussed every  
11 part of the agreement with my attorney. I understand and voluntarily enter into this Plea  
12 Agreement. Furthermore, I have consulted with my attorney about my rights, I  
13 understand those rights, and I am satisfied with the representation of my attorney in this  
14 case. No other promises or inducements have been made to me, other than those  
15 contained in this Plea Agreement, and no one has threatened or forced me in any way to  
16 enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

17  
18   
19 JOSE ALBERTO ABUNDIZ  
Defendant

Date

20 I have read the Plea Agreement and have discussed the contents of the agreement  
21 with my client. The Plea Agreement accurately and completely sets forth the entirety of  
22 the agreement between the parties. I concur in my client's decision to plead guilty as set  
23 forth in the Plea Agreement. There is no legal reason why the Court should not accept the  
24 Defendant's plea of guilty.

25   
26 GREGORY L. SCOTT  
Attorney for the Defendant

Date

8 JUNE 2017